

Agenda No.:
Request to: Comprehensive Zoning Ordinance Amendment (ZA09-0004)
Applicant(s): City of Frisco

DESCRIPTION:

Request to amend the Comprehensive Zoning Ordinance pertaining to regulations for alcohol sales. MW

HISTORY:

February 2, 2002, Frisco voters approved a local option to allow the sale of beer & wine as well as restaurants to serve alcohol without a membership (private club).

May 9, 2009, Denton County voters approved a local option to allow the sale of alcohol that includes locations within the City of Frisco.

REMARKS:

The City is requesting to amend the Comprehensive Zoning Ordinance for two specific reasons:

- Establish criteria for the sale of alcohol in Denton County, as approved by the Denton County local option election of May 9, 2009;
- Bring the existing criteria for restaurants, private clubs, and package sales into compliance with state laws as established by the Texas Alcoholic Beverage Commission (TABC); and

Denton County Local Option

On May 9, 2009, Denton County voters approved a local option to allow the sale of alcohol in portions of Frisco that are located in Denton County. Currently, the Comprehensive Zoning Ordinance (CZO) does not contain criteria for this land use. The City Attorney's office has been working with staff to amend sections of the CZO to define and create standards for *Alcoholic Beverage Establishments*.

Amend Existing Criteria

Restaurant or Cafeteria Use

1. Consolidated all of the regulations on restaurant or cafeteria use into one section
2. If restaurant or cafeteria make more than 75% of their revenue from sale of alcohol for on-premise consumption, we not only require an SUP (previously required), but we now will consider them to be an alcoholic beverage establishment, which triggers more strict requirements for spacing.

MW

3. Allow public school to request 1,000 foot spacing requirement.
4. Fixed use chart to reflect new changes
5. Eliminated spacing requirement for private schools because TABC doesn't allow municipalities to require spacing between an establishment that holds a food and beverage certificate (restaurant or cafeteria) and a private school.

Alcoholic Beverage Establishment

1. Created a new use called alcoholic beverage establishment. Previously any bar-like use was being classified as a private club. A private club, however, is specifically defined by the TABC. We even reference this definition in our code, but then apply it inappropriately. Since many establishments would not qualify as a private club, we needed to create a new use to be able to regulate and not let those unqualified private clubs slip through the cracks.
2. Required SUP for alcoholic beverage establishments in the same zoning districts as private clubs. They are regulated identically.
3. Defined alcoholic beverage establishment.
4. Created more stringent spacing requirements, which is permitted for regulation of alcoholic beverage establishments and private clubs, as those terms are defined in the proposed ordinance.
5. Fixed use chart to reflect new changes.

Private Club

1. Redefined to match requirements for TABC.
2. More stringent spacing requirements were included.
3. Amended use chart to reflect new changes.
4. Moved regulations on private clubs from an obscure part of the code to the use section, where most other use regulations are found.

Package Sales

1. Renamed beer and wine package sales to just Package Sales so that we can include liquor stores in our regulations.
2. Provided regulations for the sale of liquor where previously Frisco had little regulations.

3. Deleted the unlawful spacing requirements that were previously included in your ordinance but kept the spacing requirements that were permitted under the **TABC**.
4. Deleted SUP requirement.
5. Defined Package Sales.
6. Amended use chart to reflect new changes.

Miscellaneous Changes

Ensured that changes in terminology were made throughout the code (i.e. regulations on private clubs now should regulation private clubs and alcoholic beverage establishments).

RECOMMENDATION:

Staff recommends amending the Comprehensive Zoning Ordinance as follows:

Article II

3.03 Schedule of Uses (Use Chart)

| Section 3.03(F) Retail Uses | O-1 | O-2 | NS | R | OT-C | H | C-1 | C-2 | CO | IT | I | Preston Road Overlay District | | | | |
|------------------------------------|----------|----------|-----------------------|--------|----------------------------------|--------------|--------------|------------------|--------------------------|------------|---|-------------------------------|----------------|-------------|-----------------|----------------|
| | Office 1 | Office 2 | Neighborhood Services | Retail | Original Town Commercial Highway | Commercial 1 | Commercial 2 | Corporate Office | Information & Technology | Industrial | | US 380 Gateway | Rural Corridor | Main Street | Retail Corridor | SH 121 Gateway |

| | | | | | | | | | | | | | | | | |
|----------------------------------|--|----|----|----|----|----|----|----|----|----|--|--|--|--|--|--|
| Alcoholic Beverage Establishment | | 26 | | 26 | 26 | 26 | 26 | 26 | 26 | 26 | | | | | | |
| Beer & Wine Package Sales | | | 31 | 31 | 31 | 31 | 31 | | | | | | | | | |
| Private Club | | 32 | | 32 | 32 | 32 | 32 | 32 | | | | | | | | |
| Restaurant or Cafeteria | | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | | | | | | |

| Section 3.03(G) Service Uses | O-1 | O-2 | NS | R | OT-C | H | C-1 | C-2 | CO | IT | I | Preston Road Overlay District | | | | |
|-------------------------------------|----------|----------|-----------------------|--------|----------------------------------|--------------|--------------|------------------|--------------------------|------------|---|-------------------------------|----------------|-------------|-----------------|----------------|
| | Office 1 | Office 2 | Neighborhood Services | Retail | Original Town Commercial Highway | Commercial 1 | Commercial 2 | Corporate Office | Information & Technology | Industrial | | US 380 Gateway | Rural Corridor | Main Street | Retail Corridor | SH 121 Gateway |

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|----------------------------------|--|----|----|----|----|----|----|----|----|----|--|--|--|--|--|--|
| Alcoholic Beverage Establishment | | 26 | | 26 | 26 | 26 | 26 | 26 | 26 | 26 | | | | | | |
| Beer & Wine Package Sales | | | 31 | 31 | 31 | 31 | 31 | | | | | | | | | |
| Private Club | | 32 | | 32 | 32 | 32 | 32 | 32 | | | | | | | | |
| Restaurant or Cafeteria | | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | 25 | | | | | | |

Section 3.04 Conditional Development Standards

~~25. Restaurant or Cafeteria:~~

- ~~a) No drive through restaurants permitted.~~
- ~~b) Restaurants are permitted to sell alcohol by right if the subject property was located within the City limits as of February 2, 2002. For property annexed into the City after February 2, 2002, a restaurant must obtain a specific use permit for a Private Club for the ability to sell alcohol (see Private Club regulations).~~
- ~~c) A restaurant that sells alcohol shall not be located closer than 300 feet to a church and/or public hospital measured along the property lines of the street fronts from front door to front door, and in direct lines across intersections.~~
- ~~d) A restaurant that sells alcohol shall not be located closer than 300 feet to a public or private school measured in a direct line from property line to property line, and in direct lines across intersections.~~
- ~~e) The distance between a restaurant that sells alcohol and a private school can be increased to 1,000 feet if the City Council receives a request from the governing body of the private school to do so.~~
- ~~f) Restaurants that derive more than 75% of their revenue from the sale of alcohol are permitted only by specific use permit.~~

25. Restaurant or Cafeteria:

- (a) A Restaurant or Cafeteria is permitted by specific use permit in the NS zoning district and is permitted by right in the R, OTC, O-2, C-1, C-2, CO, H, IT, and I zoning districts.
- (b) Except as otherwise provided, restaurants with drive-through are permitted in any zoning district where a Restaurant or Cafeteria is permitted. Restaurants with drive-through are not permitted in the O-2 zoning district and are only permitted in the Preston Road Overlay District subject to the conditional standards in Article III, Section 2 (4.05) B.
- (c) Restaurants or Cafeterias that sell alcohol shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended and any applicable local option elections.
- (d) Except along Main Street in the OTC zoning district, a Restaurant or Cafeteria that sells alcohol shall not be located within the following:

- A. Three hundred (300) feet from a church, public hospital, and/or public school.
- B. One thousand (1000) feet from a public school if the City Council receives a request for this additional spacing requirement from the school district, and the City Council adopts such additional spacing requirements by resolution.
- (e) Measurement for the distance between a Restaurant or Cafeteria where alcohol beverages are sold and a church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections.
- (f) Measurement for the distance between a Restaurant or Cafeteria where alcoholic beverages are sold and a public school shall be:
 - A. In a direct line from the property line of the public school to the property line of the place of business, and in a direct line across intersections; or
 - B. If the restaurant that sells alcohol is located on or above the fifth story of a multistory building, in a direct line from the property line of the public school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the Restaurant or Cafeteria is located.
- (g) If a Restaurant or Cafeteria receives seventy-five percent (75%) or more of its gross revenue on a quarterly basis from the sale or service of alcoholic beverages for on-premise consumption, the use will no longer qualify as a Restaurant or Cafeteria and will be classified and regulated by the City as an alcoholic beverage establishment under the Frisco Comprehensive Zoning Ordinance."

26. ~~Restaurant or Cafeteria:~~

~~Restaurants with a drive through are permitted in the Preston Road Overlay District subject to the conditional development standards in Article III, Section 3(4.05)(B).~~

26. Alcoholic Beverage Establishment

- (a) Alcoholic Beverage Establishments shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended and any applicable local option elections.
- (b) An alcoholic beverage establishment is permitted only by specific use permit in O2, R, OT-C, H, C1, C2, CO, and IT zoning districts.
- (c) An alcoholic beverage establishment shall not be located within:
 - A. 800 feet from a church, public hospital, public school, private school, and/or residential zoning district. For this purpose, residential zoning districts shall include, but is not limited to properties that are zoned Neighborhood Service and residential Planned Development Districts.
 - B. 1000 feet from a public school if the City Council receives a request for this additional spacing requirement from the school district, and the City Council adopts such additional spacing requirements by resolution; and
 - C. 1000 feet from a private school if the City Council receives a request for this additional spacing requirement from the board of the private school, and the City Council adopts the additional spacing requirements by resolution.
- (d) Measurement for the distance between an alcoholic beverage establishment and the uses listed above or the nearest residential zoning district shall be in a straight line from the nearest property line of the lot where the alcoholic beverage establishment is located, without regard to intervening structures or objects, to the nearest property line of the lot where the church, public hospital, public school, and/or private school is located.

If a use were operating as a private club in accordance with Frisco's Comprehensive Zoning Ordinance and pursuant to a valid specific use permit before _____, but if fails to comply with the new regulations set forth in this Paragraph, that private club shall be allowed to continue operating in the same location subject to the continued rights of the City Council to terminate the use's specific use permit, in accordance with the law.

31. ~~Beer & Wine Package Sales (ZA02-0024, ZA07-0003):~~

- ~~a) Shall not be located closer than three hundred (300) feet to a church and/or public hospital measured along the property lines of the street fronts from front door to front door and in direct lines across intersections.~~
- ~~b) Shall not be located closer than three hundred (300) feet to a public or private school measured in a direct line from property line to property line, and in direct lines across intersections.~~
- ~~c) The distance between a Beer & Wine Package Sales Establishment and a private school can be increased to one thousand (1,000) feet if the City Council receives a request from the governing body of the private school to do so.~~
- ~~d) Beer sales are not permitted in residential areas. Residential areas include properties that are zoned Neighborhood Service or a Planned Development that allows vertical mixed use developments with a residential component, because these zoning districts are part of the neighborhood(s) within which they are located.~~
- ~~e) Beer & Wine Package Sales establishments that derive more than seventy-five (75) percent of their gross revenue from the sale of beer and/or wine:
 - ~~1. Are permitted only by Specific Use Permit in the R, H, C-1, and C-2 zoning districts;~~
 - ~~2. Shall not be located closer than one thousand five hundred (1,500) feet from another Beer & Wine Package Sales Establishment that derives more than seventy-five (75) percent of their gross revenue from the sale of beer and/or wine, measured building-to-building (or outer wall of the lease space) in a straight line;~~
 - ~~3. Shall not be located closer than eight hundred (800) feet from the building to the property line of a residential zoning district; and~~
 - ~~4. Shall not be located closer than one thousand five hundred (1,500) feet from the property line of a City park, or the property line of a property owned by a church, public hospital, public or private school, public or private college/university, rehabilitation care institution, or child or adult day care, measured in a straight line from front door of the establishment to the nearest property line of a residential zoning district, City park, church, public or private hospital, public or private school, public or private college/university, rehabilitation center, or child or adult day care."~~~~

31. Package Sales:

- ~~(a) A Package Sales establishment shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended, and any applicable local option elections.~~
- ~~(b) A Package Sales establishment is permitted only in the R, H, C-1, and C-2 zoning districts.~~
- ~~(c) Beer sales are not permitted in residential zoning districts.~~

- (d) In the OTC zoning district:
 - A. Package Sales establishments are only permitted in the OTC zoning district, between North and South County Road and the BNSF Rail Line;
 - B. Only two (2) Package Sales establishments may be located in the OTC, and only one (1) Package Sales establishment may be located on any given block.
- (e) A Package Sales establishment shall not be located within the following:
 - A. Three hundred (300) feet from a church, public hospital, public school, and/or private school. But, a Package Sales establishment may be located within three hundred (300) feet of a private school if minors are prohibited from entering the package store.
 - B. One thousand (1000) feet from a public school if the City Council receives a request for this additional spacing requirement from the school district, and the City Council adopts such additional spacing requirements by resolution.
 - C. One thousand (1000) feet from a private school if the City Council receives a request for this additional spacing requirement from the board of the private school, and the City Council adopts the additional spacing requirements by resolution. But, the City Council may not adopt this additional spacing required if minors are prohibited from entering the Package Sales establishment.
- (f) Measurement of the distance between the Package Sales establishment and the church or public hospital shall be along the property lines of the street fronts, from front door to front door, and in a direct line across intersections. Measurement for the distance between the Package Sales establishment and a public or private school shall be:

- A. In a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections; or
- B. If the Package Sales establishment is located on or above the fifth (5th) story of a multistory building, in a direct line from the property line of the public or private school to the property line of the place of business, in a direct line across intersections, and vertically up the building at the property line to the base of the floor on which the Package Sales establishment is located."

32. ~~Restaurant or Cafeteria (ZA07-0003):~~

~~Restaurants that sell alcohol shall be subject to compliance with the Texas Alcoholic Beverage Code, as it exists or may be amended, and to the following development criteria:~~

- ~~a) Restaurants are permitted by specific use permit in the NS zoning district and are permitted by right in the R, OTC, H, C-1, C-2, CO, IT, and I zoning districts. Restaurants are permitted to sell alcohol by right if the subject property was located within the City limits as of February 2, 2002. For property annexed into the City after February 2, 2002, a restaurant must obtain a specific use permit for a Private Club for the ability to sell alcohol (see Private Club regulations).~~
 - ~~b) A restaurant that sells alcohol shall not be located closer than three hundred (300) feet to a church and/or public hospital measured along the property lines of the street fronts from front door to front door, and in direct lines across intersections. This separation requirement does not apply to restaurants located along Main Street in the OTC District.~~
 - ~~c) A restaurant that sells alcohol shall not be located closer than three hundred (300) feet to a public or private school measured in a direct line from property line to property line, and in direct lines across intersections. This separation requirement does not apply to restaurants located along Main Street in the OTC District.~~
 - ~~d) The distance between a restaurant that sells alcohol and a private school can be increased to one thousand (1,000) feet if the City Council receives a request from the governing body of the private school to do so. This does not apply to restaurants located along Main Street in the OTC District.~~
- ~~Restaurants that derive more than seventy five (75) percent of their revenue from the sale of alcohol are not permitted in the NS zoning district and are permitted by specific use permit in the R, OTC, H, C-1, C-2, CO, IT, and I zoning districts."~~

32. Private Club

- (a) Private clubs shall be subject to compliance with the Texas Alcoholic Beverage Code, as amended and any applicable local option elections.
- (b) A private club is permitted only by specific use permit in O2, R, OT-C, H, C1, C2, CO, and IT zoning districts.
- (c) A private club shall not be located within:
 - A. 800 feet from a church, public hospital, public school, private school, and/or residential zoning district. For this purpose, residential zoning districts shall include, but is not limited to properties that are zoned Neighborhood Service and residential Planned Development Districts.
 - B. 1000 feet from a public school if the City Council receives a request for this additional spacing requirement from the school district, and the City Council adopts such additional spacing requirements by resolution; and
 - C. 1000 feet from a private school if the City Council receives a request for this additional spacing requirement from the board of the private school, and the City Council adopts the additional spacing requirements by resolution.
 - D. Measurement for the distance between a private club and the uses listed above or the nearest residential zoning district shall be in a straight line from the nearest property line of the lot where the alcoholic beverage establishment is located, without regard to intervening structures or objects, to the nearest property line of the lot where the church, public hospital, public school, and/or private school is located.

Section 4.02 Definitions

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Alcoholic Beverage Establishment – any establishment that derives 75 percent or more of its gross revenue on a quarterly basis from the sale or service of alcoholic

beverages, as defined in the Texas Alcoholic Beverage Code, as it exists or may be amended, for on-premise consumption.

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~~**Beer & Wine Package Sales (ZA01-0010)** — An establishment engaged in the selling of beer and/or wine to the general public for off-site personal or household consumption and rendering services incidental to the sale of such goods.~~

...

Package Sales – An establishment principally for the retail sale of alcoholic beverages, as defined in the Texas Alcoholic Beverage Code as it exists or may be amended, to the general public for off-premise consumption and rendering services that are incidental to the sale of such goods.

...

~~**Private Club** – An establishment providing social and dining facilities, as well as alcoholic beverage service, to an association of persons, and otherwise falling within the definition of, and permitted under the provisions of, that portion of Title 3, Chapter 32, Vernon's Texas Codes Annotated, Alcoholic Beverage Code, as the same may be hereafter amended, and as it pertains to the operation of private clubs.~~

Private Club – an establishment holding a private club permit under Chapter 32 or 33 of the Texas Alcoholic Beverage Code, as amended, that derives 35 percent or more of its gross revenue from the sale or service of alcoholic beverages for on-premise consumption and that is located within a dry area as defined in Title 6 (Local Option Elections) of the Texas Alcoholic Beverage Code, as amended,. Private Club does not include a fraternal or veterans organization, as defined in the Texas Alcoholic Beverage Code, as amended, holding a private club permit under Chapter 32 or 33 of the Texas Alcoholic Beverage Code, as amended,. A Private Club does not include the holder of a food and beverage certificate, as defined in the Texas Alcoholic Beverage Code, as amended,. Unless the person owning or operating the use supplies the building official with records to prove otherwise, an establishment holding a private club permit under Chapter 32 or 33 of the Texas Alcoholic Beverage Code, as amended, is presumed to derive 35 percent or more of its gross revenue from the sale or service of alcoholic beverages for on-premise consumption.

Article III

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Section 5.05 General Requirements of the Preston Road Overlay District

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Subsection F Parking

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6. Main building in-line restaurants may reduce their parking from one (1) space per 100 square feet of floor area to one (1) space per 200 square feet of floor area. This reduction is available for up to 10% of the main building's total floor area. This reduction is not available to Private Clubs and/or Alcoholic Beverage Establishments.

Article IV

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Section 4.07 Parking Requirements Based on Use

Alcoholic Beverage Establishments – One (1) parking space for each seventy-five (75) square feet of gross floor area.

Section 11.06 Circulation and Parking Requirements

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I. Main building in-line restaurants may reduce their parking from one (1) space per one hundred (100) square feet of floor area to one (1) space per two hundred (200) square feet of floor area. This reduction is available for up to 10% of the main building's total floor area. This reduction is not available to Private Clubs and/or Alcoholic Beverage Establishments.